

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

GLENN RICHARD UNDERWOOD,
Debtor.

_____ /

GLENN RICHARD UNDERWOOD, *pro se*,
Plaintiff,

vs.

PATRICIA SELENT, *pro se*, et al.,
Defendants.

_____ /

Case No. 06-55754

Chapter 11

Judge Thomas J. Tucker

Adv. Pro. No. 14-4966

**ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DISCOVERY FROM
DEFENDANTS PATRICIA SELENT, LYNDA CARTO, AND CHARLES UNDERWOOD**

This case is before the Court on a motion filed by Plaintiff on April 24, 2015, entitled "Motion Requesting an Order to Compel Disclosure and to Compel Depositions Pertaining to Defendants Patricia Selent, Lynda Carto and Charles Underwood Pursuant to Fed. R. Civ. Proc. 30 Fed. R. Civ. Proc. 34 and Fed. R. Civ. Proc. 37(a)(3)" (Docket # 146, the "Motion"). The Motion seeks (1) to compel Defendants Patricia Selent and Lynda Carto to produce documents related to Counts I, II, & III of the complaint in "answer to Plaintiff's 'First Set of Requests for Production of Documents' dated April 20, 2015," and (2) to compel Defendant Charles Underwood to appear and be deposed on Wednesday, April 29, 2015, commencing at 10:00 a.m., under a document entitled "Notice of Depositions of Patricia Selent, Lynda Carto and Charles Underwood," served by mail on April 25, 2015.¹ The Court concludes that a hearing on the Motion is not necessary, and the Motion must be denied for the following reasons.

To the extent the Motion seeks to compel Defendants Patricia Selent and Lynda Carto to produce documents, it must be denied, for the reasons stated in the Court's order filed May 18, 2015, entitled "Order Denying Plaintiff Glen R. Underwood's Motion to Request a Time Extension for Patricia Selent, Attorney Gene Kohut, Charles Underwood and Lynda Carto to Respond to Plaintiff's Requests for Production of Documents and for Completing Depositions," (Docket # 159, the "May 18, 2015 Order"). For the reasons explained in that Order, Plaintiff's

¹ See Ex. 1 of Docket # 155.

document requests served on Defendants Selent and Carto were untimely; so those Defendants had no duty to respond to the document requests. From this, it follows that Plaintiff cannot be heard now to complain the any response by Selent or Carto to the document requests was inadequate.

To the extent the Motion seeks to compel the deposition of Defendant Charles Underwood, Patricia Selent, and Lynda Carto, it must be denied because Plaintiff did not provide these Defendants with “reasonable written notice” of the depositions, as required by Fed. R. Civ. P. 30(b)(1), made applicable to adversary proceedings under Fed. R. Bankr. P. 7030. The Notice of Depositions was served by mail on April 25, 2015. Assuming 3 days for mail delivery, it is likely that the Defendants would not have received the Notice until April 28, 2015, only one day before the scheduled depositions. A one-day (or even a three-day) advance notice of a deposition is not “reasonable written notice” as is required by Fed. R. Civ. P. 30(b)(1). *See C & F Packing Co., Inc. v. Doskocil Cos., Inc.*, 126 F.R.D. 662, 679 (“[C]ounsel is entitled, when possible, to a date which does not conflict with other obligations and to an opportunity to prepare for the deposition.”); *Sec. & Exchange Comm’n v. Art Intellect, Inc.*, No. 2:11-cv-00357-TC-DN, 2012 WL776244, at * 2-3 (D. Utah March 7, 2012)(“[t]he Federal Rules of Civil Procedure require ‘reasonable written notice’ of a deposition be given to the deponent” and finding that “less than three days to prepare and appear for [a] deposition” was not reasonable notice).

It is obviously now too late to provide reasonable written notice and to complete the depositions by the May 1, 2015 discovery deadline set by the Court’s Adversary Proceeding Scheduling Order, entered on December 22, 2014 (Docket # 74). *See* May 18, 2015 Order; *see also In re Sulfuric Acid Antitrust Litigation*, 230 F.R.D. 527, 531 (N.D. Ill. 2005).

Accordingly,

IT IS ORDERED that the Motion (Docket # 146) is denied in its entirety.

Signed on May 22, 2015

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge